IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8356 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDRAKUMAR RAMDAS GOHEL & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AJAY L PANDAV for Applicant(s) : 1 - 2.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR ATIT D THAKORE for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2007

ORAL JUDGMENT

1. Rule. Shri K.T.Dave, learned APP waives service of rule on behalf of the respondent No.1 and Shri Atit Thakore, learned advocate waives service of rule on behalf of the respondent No.2. With the consent of the learned advocates

appearing on behalf of the parties, the matter is taken up for final hearing today.

2. By way of this application under section 482 of the Cr.P.C., the petitioners have prayed for an appropriate order quashing and setting aside the proceedings of criminal case No. 1100 of 2007 / criminal inquiry No. 83 of 2006 pending in the Court of learned Chief Judicial Magistrate, Himmatnagar and also to quash and set aside the order dated 4.4.2007 passed below Exh.1 passed in criminal case No. 1100 of 2007 / criminal inquiry No. 83 of 2006.

3. It appears from the record that the respondent No.2 herein – wife has filed aforesaid criminal case / criminal inquiry in the Court of learned Chief Judicial Magistrate, Himmatnagar against the petitioners for the offence punishable under sections 498 and 114 of the I.P.C. and under section 506 of the Dowry Prohibition Act as well as under section 12(1) of the Protection of Woman From Domestic violence Act; 2005. After

verification, the learned Chief Judicial Magistrate, Himmatnagar passed an order for sending the complaint for inquiry under section 202 of the Cr.P.C. and thereafter passed an order on 4.4.2007 holding that so far as the criminal complaint for the offence under I.P.C. as well as Dowry Prohibition Act is concerned, the Himmatnagar Court would not have jurisdiction, however, so far as offence under section 12(1) of the Protection of Woman From Domestic violence Act; 2005 is concerned, the learned Chief Judicial Magistrate passed an order to issue summons upon the petitioners for the said offence. However, it appears that when the summons were issued, summons were issued for the offence under sections 498 and 114 of the I.P.C. also. When the learned Chief Judicial Magistrate, Himmatnagar has already passed an order on 4.4.2007 holding that for the offence under I.P.C. and Dowry Prohibition Act he would not have any jurisdiction, there was no question of issuing the summons against the petitioners under the I.P.C. Under the circumstances, the

summons issued by the learned Chief Judicial Magistrate, Himmatnagar for the offence under I.P.C. requires to be quashed and set aside.

4. Now, what is required to be considered is the summons issued by the learned Chief Judicial Magistrate, Himmatnagar for the offence under section 12(1) of the Protection of Woman From Domestic violence Act; 2005. It appears that for invoking the jurisdiction of the Himmatnagar Court, the respondent No.2 has stated her temporary address of her advocate at Himmatnagar though she is residing and staying with her parents at Airport Road, Sardarnagar, Ahmedabad. It prima facie appears that only with a view to invoke the jurisdiction of the Himmatnagar Court the said address has been given and the complaint has been filed before the Himmatnagar Court, which is nothing but abuse of process of law. Shri Thakore, learned advocate appearing for the respondent No.2 has submitted that the respondent No.2 would not have any objection if an appropriate direction is issued directing the

learned Magistrate, Himmatnagar to transfer the said case for the offence under section 12(1) of the Protection of Woman From Domestic violence Act; 2005 to the Court having jurisdiction and can take cognizance.

5. Under the circumstances and for the reasons stated above, the learned Chief Judicial Magistrate, Himmatnagar is directed to transfer the criminal case No.1100 of 2007 / inquiry case No. 83 of 2006 to the learned Metropolitan Magistrate, Court No.17, Ahmedabad having the jurisdiction over Sardarnagar area. It is made clear that the said complaint would be only for the offence under section 12(1) of the Protection of Woman From Domestic violence Act; 2005 and for rest, it will be open for the respondent No.2 to file an appropriate proceedings and/or complaint before the appropriate Court / Magistrate having jurisdiction. Shri Pandav, learned advocate appearing for the petitioners has submitted that there are procedural irregularities and the

procedure which is required to be followed under the aforesaid Act of 2005 has not been followed. Without expressing any opinion on merits, it will be open for the petitioners to raise such contentions before the learned Metropolitan Magistrate before whom the aforesaid criminal complaint will be transferred and as and when such contentions are raised, the same shall be dealt with by the learned Magistrate in accordance with law and on its own merits.

6. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

(M.R.Shah, J.)

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